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### **REMARKS**

Claims 1, 8 and 29-31 have been amended. New claims 37 and 38 have been added. Claims 2-4 and 28 have been canceled. Thus, claims 1, 5, 7-15, 18-22, 25-27, and 29-38 are now pending in the present application. Support for the amendment to claim 1 may be found in the specification at page 13, lines 16-19; at paragraphs [0047] and [0051], and in canceled claim 28. Support for new claims 37 and 38 may be found in the specification at page 22, paragraph [0090] of the published PCT application which corresponds to paragraph [0108] of the published US application. Thus, no new matter has been added. Reconsideration and withdrawal of the present rejections are respectfully requested.

#### Interview Summary

Applicants' representatives would like to thank Examiners Mukhopadhyay and Shosho for the courtesy extended to them during the telephonic interview conducted on July 29, 2010. The substance of this interview is reflected in the amendments and remarks presented herein, as well as in the Interview Summary mailed August 4, 2010.

#### Rejections under 35 U.S.C. § 103(a)

##### **Rejections based on NPL "Apricot Glaze"**

Claims 1-4, 7-15, 18-22, 25-27, 28 and 31-36 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over NPL "Apricot Glaze" in view of Wiggett et al. (GB 2078082) and Smadar (US 3,650,766).

Claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over NPL "Apricot Glaze" in view of Wiggett et al. (GB 2078082) and Smadar (US 3,650,766) and further in view of Holscher et al. (US 4,762,721).

The currently claimed invention addresses the problem of providing an (in-situ) ready-to-use cold gelling pastry glaze composition which, before application, is liquid or semi-liquid in appearance at ambient temperatures below 35°C, and which forms a pastry glaze upon contact with a food product support. The presently claimed pastry glaze composition will only jellify and turn into the final pastry glaze at ambient temperatures below 35°C when applied to a food

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product support which provides the extra calcium needed for jellification, and not before. This liquid or semi-liquid pastry glaze (precursor) composition forms a pastry glaze, and does not gel upon storage. This is a very important commercial property, as the glaze composition before application may be transported and stored for a prolonged period, during which time the composition will not gel prematurely. Thus, the currently claimed compositions can be used to form on demand and in-situ pastry glazes on food product supports.

As discussed during the interview, and agreed upon by the Examiners, the Smadar reference is no longer relevant in view of the amendment to claim 1, since Smadar neither teaches nor suggests that the extra amount of  $\text{Ca}^{+2}$  ions and/or other ions needed for jellification are naturally present in the food product. Thus, the rejection will only be addressed as it relates to the combination of NPL “Apricot Glaze” and Wiggett et al.

In the Interview Summary mailed August 4, 2010, the Examiner asserts that Wiggett indicates that “calcium promotes gelation (p2, lines 56-58)” and that Wiggett “has disclosed that the amount of calcium can be determined on a trial or experimental basis and depends on the fruit employed in the composition (col 1, lines 72-74 and 82-85).

Applicants submit that there is no teaching or suggestion in the combination of Wiggett and “Apricot Glaze” of a glaze composition which only jellifies when applied onto a food product support, wherein the extra amount of  $\text{Ca}^{+2}$  ions and/or other ions needed for jellification are naturally present in the food product. In fact, the Office Action mailed May 27, 2010 states “neither “Apricot Glaze” nor Wiggett et al. teach that jellification needs extra amounts of calcium when applied onto a food product.” Office Action at page 5. In addition, Applicants note that Wiggett et al. does not teach formation of a pastry glaze, but instead teaches spreadable or pourable fruit compositions (such as marmalade, jam, coulis or fruit puree) (see examples). Furthermore, there is no suggestion in Wiggett et al. of supplying the  $\text{Ca}^{+2}$  ions and/or other ions needed for jellification from the food product on which a glaze is spread. In fact, at page 2, lines 51-58, Wiggett et al., discloses that in order to control the degree of gellation (or to promote gellation), calcium is added to the (fruit) composition. This clearly points toward using external sources of calcium. The cited references do not teach or suggest using/exploiting the calcium ions contained in the food product itself, let alone for triggering the jellification. Thus, Wiggett et al.

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clearly teaches away from having the food item itself provide the extra source of calcium ions needed for jellification

“Apricot Glaze” also fails to teach or suggest a glaze composition in which the  $\text{Ca}^{+2}$  ions and/or other ions needed for jellification are supplied by the food product on which a glaze is spread. Because there is no teaching or suggestion in the combination of Wiggett et al. and “Apricot Glaze” of a glaze composition in which the  $\text{Ca}^{+2}$  ions and/or other ions needed for jellification from the food product on which the glaze is spread, the currently pending claims are patentable over the combination of Wiggett et al. and “Apricot Glaze.”

In addition, both “Apricot Glaze” and Wiggett et al. fail to teach or suggest a ready-to-use cold gelling glaze composition which, before application, is liquid or semi-liquid in appearance at ambient temperatures below  $35^{\circ}\text{C}$  without gelling, and wherein the glaze will only jellify at ambient temperatures below  $35^{\circ}\text{C}$  when applied onto a food product as presently claimed. “Apricot Glaze” discloses nothing more than a traditional concentrated glaze. This glaze is not a ready-to-use glaze, as it requires pre-heating before application to the food product. In contrast, a ready-to-use pastry glaze as presently claimed, does not require any pre-heating or chilling step before application, and may be applied directly to the food product at ambient temperature, which is both practical and convenient. When considering Examples 1 to 6 of Wiggett et al., it is clear that the disclosed compositions are not liquid or semi-liquid at ambient temperatures since the filling temperatures (into jars) is in the range of  $70^{\circ}\text{C}$  and  $105^{\circ}\text{C}$ . When considering Examples 7 and 8 of Wiggett et al., it is clear that the resulting pourable fruit compositions, in the form of a sol, will not jellify further, let alone at ambient temperature.

Holscher et al. is relied upon for its disclosure of the thixotropic property of a glazing composition with the addition of xanthan gum, but does not remedy the deficiency in the teaching of Apricot Glaze and Wiggett et al. Actually, Holscher et al. teaches away from a glaze which will only jellify at ambient temperatures below  $35^{\circ}\text{C}$  when applied onto a food product, since in all of the examples a baking step at  $210\text{-}220^{\circ}\text{C}$  is required so as to obtain the glazed food product.

Applicants note that, when the extra source of calcium ions supplied by the food product itself and not by an external source, an improved quality glaze is obtained. By relying upon the calcium ions transfer between the food product support and the glaze composition, the glaze composition is allowed to jellify slowly onto the food product, which in turn will provide a much more

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conformal glazing of the corresponding food product. This is a very important property for food products with complex shapes (e.g. fruit tarts), and for which maintaining original appearance is important (specification, paragraph [0108]). For such products such as fruit tarts, using an external ion source in the form of bath wherein the fruit tart would be immersed (as in the Smadar reference), is not an option. Furthermore, it is believed that the excellent cut-ability of the glaze according to invention is linked to this slow jellification and may be explained by the slow evolution of its texture (firmness), once in contact with food product, towards a firm gel (specification at paragraphs [0109], and [0112] to [0114]).

#### **Rejections based on Miller et al.**

Claims 1-4, 7-15, 18-22, 25-27, 28 and 31-36 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Miller (US 1,761,738) in view of Wiggett et al. (GB 2078082) and Smadar (US 3,650,766).

Claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Miller (US 1,761,738) in view of Wiggett et al. (GB 2078082) and Smadar (US 3,650,766) and further in view of Holscher et al. (US 4,762,721).

Miller discloses a pastry recipe, and a method for making a pastry glaze in which water or milk is added to sugar, mixed until smooth, followed by an optional addition of vanilla and cream of tartar. This is the only disclosure of a glaze by Miller. Thus, Miller does not teach or suggest any of the limitations of claim 1 as noted above. As discussed above, Smadar et al. is no longer relevant to any of the rejections presented in the Office Action. Wiggett et al. and Holscher are discussed above. Thus, the deficiency in the teaching of Miller is not remedied by Wiggett et al., Smadar or Holscher.

In view of the comments presented above, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a).

#### **No Disclaimers or Disavowals**

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather,

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any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

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CONCLUSION

Applicants submit that all claims are in condition for allowance. However, if minor matters remain, the Examiner is invited to contact the undersigned at the telephone number provided below. If any additional fees are required, please charge these to Deposit Account No. 11-1410. Should there be any questions concerning this application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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